

DEPARTMENT OF STATE REVENUE

FIRST SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 02-970330

**Gross Income Tax
For The Period: 1991 Through 1993**

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ISSUES

I. Gross Income Tax—National Broadcasting Networks

Authority: IC 6-2.1; IC 6-2.1-3-28; 45 IAC 1-1-124

The taxpayer protests the imposition of gross income on receipts received from a national broadcasting network.

STATEMENT OF FACTS

During the years under audit the taxpayer owned 100% of the stock of corporation "S". Corporation "S" was included in the taxpayer's consolidated Indiana income tax return. At issue are the receipts received by corporation "S", which licensed the rights to nationally broadcast a major Indiana sporting event to a national broadcasting network.

I. Gross Income Tax—National Broadcasting Networks

DISCUSSION

A Letter of Findings was issued by the Department, on October 14, 1998, with regard to the above protested matters. (*See*, LOF 02-980356) The taxpayer requested a rehearing, and that rehearing was granted. The rehearing was held on January 14, 1999. The standard of review for a rehearing is set out in 45 IAC 15-5-5, which states:

(b) If a rehearing is granted, the rehearing will not be held de novo unless abuse of discretion is alleged. When such abuse is alleged, the evidence will not be reweighed. Instead, the department will only consider evidence most favorable to

the department's position and reverse only if the decision is clearly against the logic and effect of the facts and circumstances. However, if the taxpayer presents new and relevant evidence as a grounds for reversal, the new evidence will be weighed in light of all relevant facts and circumstances.

The taxpayer receives income from a national broadcasting network for the right of the broadcaster to telecast an Indiana sporting event. Corporation "S"—which is the portion at issue here—does not have business situs outside of Indiana. The sporting event takes place in Indiana, the national broadcast network films the event in Indiana, and the television signal originates in Indiana. The taxpayer protests the imposition of gross income tax on the receipts it receives from the national network. The taxpayer's argument is two-pronged: (1) the income is not subject to the levying provisions of 45 IAC 1-1-124; and (2) if, *arguendo*, the license fees were subject to the levying provisions they would still be exempt under IC 6-2.1-3-28.

The regulation in question, 45 IAC 1-1-124, states:

(d) Income from the leasing of motion picture films and intangible telecast rights to exhibitors within Indiana is subject to gross income tax.

The taxpayer concludes that if it is not within the scope of the regulation, then the Department cannot tax the income. The Department agrees that the taxpayer does not come within the regulation cited above, but the taxpayer is still subject to the analysis of intangible income set out in 45 IAC 1-1-49 and 45 IAC 1-1-51.

Corporation "S" has business situs in Indiana. Under 45 IAC 1-1-49, situs can be established in a number of ways. The use and operation of an office, factory, or store, can establish situs. The maintenance of inventory of goods for sale, distribution or manufacture can establish business situs, as well as the ownership, leasing, or rental of income-producing property. The taxpayer meets the elaborated criteria of business situs. The next issue is whether the income derived from the intangible forms an integral part of business conducted in Indiana. Indiana Dept. of Revenue v. Bethlehem Steel, 639 N.E.2d 264, is pertinent to this stage of analysis. The facts in Bethlehem involved the sale of tax benefits under "safe harbor leases." Bethlehem Steel sold equipment, then had the equipment leased back to them by the buyer, and the only money exchanged was the proceeds from the sale of the benefits. The Indiana Supreme Court found that while the taxpayer was not commercially domiciled in Indiana, it nonetheless had business situs here. The court then stated that for purposes of IC 6-2.1-2-2 and 45 IAC 1-1-51, Indiana could only tax the benefits sold if they were "integrally related" to Bethlehem's Indiana plant. Id. at 271. The taxpayer argues that the negotiations took place outside of Indiana, and that the network exercised most its rights outside of Indiana. The original Letter of Findings is pertinent on this point:

The event that is to be televised takes place in Indiana, the national broadcast network films the event in Indiana, and the television signal originates in Indiana . . . a majority of the activities actually take place in Indiana.

Under the Department's analysis, the income the taxpayer receives forms an integral part of business conducted at an Indiana situs. The income derived is from an Indiana source—i.e., the taxpayer's business situs.

Corporation "S" is also commercially domiciled in Indiana. Regulation 45 IAC 1-1-51 states that "If a taxpayer's commercial domicile is in Indiana, all of the income from intangibles will be taxed" The commercial domicile analysis, which is similar to the analysis for business situs, also leads to the conclusion that the income the taxpayer received is taxable.

The taxpayer's next argument is that *if* the license fees are subject to tax, they are nonetheless exempt under IC 6-2.1-3-28. The taxpayer argues that the Department is "hairsplitting" and that the Department is attempting to in effect rewrite exemption IC 6-2.1-3-28 so that it only applies to "local broadcasting affiliates" that broadcast national network programs. The Department notes that exemptions are strictly construed against the taxpayer. *See, Sony Music Entertainment, Inc. v. State Bd. of Tax Comm'rs*, 681 N.E.2d 800, 801 (Ind. Tax Ct. 1997). The plain language of the statute is clear, and the fact that the taxpayer is not within the rubric of the exemption stands in relief when the elements of IC 6-2.1-3-28 are broken out:

1. Gross receipts
2. derived directly
3. from a national broadcasting network
4. for broadcasting national network programs
5. are exempt from gross income tax

The taxpayer clearly does not fall within "4." The gross receipts received by the taxpayer are not *for* broadcasting national network programs. The taxpayer is not broadcasting a national broadcasting network's programming.

FINDING

The taxpayer's protest is denied.